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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/243,568	02/03/1999	UWE SCHONROCK	BEIERSDORF-5	2664

7590 10/31/2003

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NEW YORK, NY 10017

EXAMINER

ANDERSON, REBECCA L

ART UNIT PAPER NUMBER

1626

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/243,568

Applicant(s)

SCHONROCK ET AL.

Examiner

Rebecca L Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 34-44 is/are pending in the application.
- 4a) Of the above claim(s) 34-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 34-44 are currently pending in the instant application and are withdrawn from further consideration as being drawn to non-elected subject matter.

#### ***Continued Examination Under 37 CFR 1.114***

Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 5 September 2003. The submission, however, is not fully responsive to the prior Office action because the amendment to the claims has changed the invention and according to the table in MPEP 706.07(h) #10

Applicants may not switch inventions (divisional equivalent) as a matter or right or add new matter (CIP equivalent)

The previous invention, claims 22-26 and 28-33, were drawn to methods for preventing the oxidation of a cosmetic or dermatologic composition. Newly submitted claims 34-44, drawn to methods of protecting skin against skin aging caused by oxidation, are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The inventions are independent and distinct methods of use because claims 22-26 and 28-33 are methods to prevent the oxidation of a cosmetic or dermatologic composition by adding an ascorbyl compound and ascorbic acid and a-glucosylrutin to the composition while the invention of claims 34-44 is a method of protecting the skin by applying ascorbic acid and an ascorbyl compound and a-glucosylrutin. These methods of use differ in that one method is preventing oxidation of a cosmetic and the other is protecting the skin. Also, one method adds ascorbyl compound and ascorbic acid and a-glucosylrutin to a composition and the

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other method applies ascorbyl compound and ascorbic acid and a-glucosylrutin to the skin.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 34-44 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (703) 605-1157. Mrs. Anderson can normally be reached Monday through Friday 7:00AM to 3:30PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph McKane, can be reached at (703) 308-4537.

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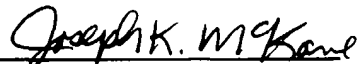
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone numbers are (703) 308-1235 and (703) 308-0196.

A facsimile center has been established. The hours of operation are Monday through Friday, 8:45AM to 4:45PM. The telecopier numbers for accessing the facsimile machine is (703)-872-9306.



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Rebecca Anderson  
Patent Examiner  
Art Unit 1626, Group 1620  
Technology Center 1600



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Joseph McKane  
Supervisory Patent Examiner  
Art Unit 1626, Group 1620  
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